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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	
PETITION TO AMEND RULE 29(B),)	Supreme Court No. R-10-_____
RULES OF THE SUPREME COURT)	
_____)	

Pursuant to Arizona Supreme Court Rule 28, Petitioners, the Clerks of Court for the Supreme Court and Court of Appeals, Divisions I and II, respectfully petition this Court to adopt their proposed amendments to Supreme Court Rule 29(B) as they appear in Appendix A.

I. Background and Purpose of the Proposed Rule Amendments

Supreme Court Rule 29 was adopted in 1991¹ along with records retention and disposition schedules to establish statewide standards relating to record retention,

¹ Supreme Court No. R-90-0060, decided December 12, 1990.

disposition and archiving. Rule 29(B) addresses appellate court records, and requires petitioners to make a “photographic or electronic reproduction or image of the original record” and to maintain this copy “in a place and manner as will reasonably assure its permanent preservation.” Read in conjunction with petitioners’ record retention policies, the rule was designed to provide the Arizona State Archives with a microfilm copy of appellate courts’ case records, *see* Admin. Order No. 91-38 (replaced by AO 99-79 (Court of Appeals)), and Admin. Order No. 91-39 (replaced by AO 2001-45 (Supreme Court)). The reason for the copying requirement was not articulated in the petition to adopt Rule 29.

Petitioners believe the interests of the judiciary would be better served by allowing them to transfer their original paper case records to State Archives rather than copies. Original records have more historical value than copies, especially microfilm copies. “Just as museums prefer to collect original artifacts rather than reproductions, . . . State Archives prefers to collect original records and papers rather than copies. Archives researchers prefer to use originals both for their readability and so that they can be assured of the integrity of the materials they are studying.”²

The current budget environment adds a note of urgency to petitioners’ request, as the cost of creating microfilm copies of paper records is not insignificant.

² Florida State Archives FAQ’s – Donating Personal and Family Papers to the State Archives, <http://dliis.dos.state.fl.us/archives/donations/index.cfm#Q4>.

The Arizona State Library, Archives and Public Records estimates the cost of producing archival-quality microfilm at \$0.15 per page. In addition, petitioners continue to pay storage costs for paper case files that have not been microfilmed and are currently eligible for transfer to State Archives. Scanning is not an option because the State Archives is not currently able to accept digital records. Petitioners will maintain their original digital records in their respective electronic record repositories until the State Archives has instituted a means for permanently preserving them.

Petitioners' proposed amendment to Rule 29(B)(1) updates a cross reference to Supreme Court Rule 19(a), which was deleted in 1994. The substance of that rule now appears in Rule 31.23(a)(5), Rules of Criminal Procedure.

II. Pre-Petition Distribution and Comment

Petitioners proposed rule change has not been circulated to any committees or individuals. However, the Arizona State Archivist, Dr. Melanie Sturgeon, was contacted about the proposed rule change and has no objection. She reported that the executive branch agencies are similarly not required to make copies of the records they transfer to the Archives.

The proposed change to Rule 29 is attached as Appendix A.

RESPECTFULLY SUBMITTED this 5th day of January, 2011.

By /S/
Hon. Rachelle Resnick, Clerk of the Court
Arizona Supreme Court

By /S/
Hon. Ruth Willingham, Acting Clerk of the Court
Arizona Court of Appeals, Division I

By /S/
Hon. Jeff Handler, Clerk of the Court
Arizona Court of Appeals, Division II

APPENDIX A

Supreme Court Rule 29. Court Records

(A) Schedules and Purge Lists. The Supreme Court shall adopt, by administrative order, retention and disposition schedules identifying the length of time court records must be kept prior to destruction and purge lists identifying documents to be removed from case files before storage or replication.

(B) Appellate Court Records.

(1) The Clerks of the Supreme Court and each division of the Court of Appeals may destroy or provide for the destruction of all documents, records, instruments, books, papers, depositions, exhibits and transcripts in any action or proceeding in the Supreme Court or Court of Appeals, or otherwise filed or deposited in the Clerk's custody, pursuant to this rule, Supreme Court administrative order, Supreme Court approved retention schedules, Supreme Court approved purge lists, Rule 24(a)(5), Rules of Civil Appellate Procedure and ~~Rule 19(a), Rules of the Supreme Court~~ Rule 31.23(a)(5), Rules of Criminal Procedure.

(2) For case file records ~~which that~~ must be maintained permanently, ~~a photographic or electronic reproduction or image of the Clerks shall transfer the original record shall be maintained in a place and manner as will reasonably assure its permanent preservation to the Arizona State Archives pursuant to records retention and disposition schedules adopted by the Supreme Court. Each court shall retain original digital records scheduled for permanent preservation until the State Archives is able to accept them.~~

(3) Other court documents listed on approved records retention and disposition schedules may be maintained and destroyed in accordance with such approved retention and disposition schedules.

(C) Superior Court Records. Superior Court records shall be maintained and may be destroyed in accordance with approved retention and disposition schedules, except that destruction of case file records shall be in accordance with Rule 94, Rules of the Supreme Court, and Rule 28, Rules of Criminal Procedure. The Clerk of Superior Court shall deliver records to State Archives pursuant to records retention and disposition schedules adopted by the Supreme Court.

(D) Justice of the Peace and Municipal Court Records. Justice of the peace and municipal court records shall be maintained and may be destroyed in accordance with approved retention and disposition schedules and the rules regarding Superior Court records, as applicable.

(E) Destruction Notice. Each appellate court and superior court shall notify the Director of the Arizona State Library, Archives and Public Records of court records designated for destruction pursuant to this rule. The notice shall identify the records to be destroyed, where they are currently stored, and specify a time period of not less than 20 days, during which the Director may review and inspect the records, and remove any records for storage and retrieval. Following the designated time period, the records may be destroyed by any lawful means.